

The Marine Mammal Protection Act

What Is It?

The Marine Mammal Protection Act (MMPA) provides protections for all marine mammals in U.S. waters, including whales, dolphins, seals and manatees.¹ It recognizes the importance of marine mammals to the oceans and seeks to restore or maintain populations at healthy and productive levels.²

In the 1960s, the public became increasingly concerned that human activities were causing abrupt declines in populations of whales, dolphins and other marine mammals.³ Hundreds of thousands of dolphins were caught and killed each year in large nets⁴ by U.S. vessels fishing for tuna in the Eastern Pacific, stoking public concern.⁵ In response to public outcry on the plight of the dolphins and other marine mammals, Congress passed the MMPA in 1972 with strong bipartisan support, and President Nixon signed it into law.⁶

How Does It Work?

The MMPA protects individual animals as well as entire populations. It does this by prohibiting the “take” of marine mammals, which means to “harass, hunt, capture or kill” any marine mammal or attempt to do so.⁷ Exceptions can be made through a permitting process for “takes” that are incidental to otherwise lawful activities, including commercial fishing, scientific research and public display at institutions such as aquariums.⁸

The MMPA also prohibits the import, export, transport, possession, sale or purchase of marine mammals and their products.⁹ The law applies to any person or vessel (or other conveyance) under U.S. jurisdiction, whether on U.S. waters or lands or on the high seas.¹⁰

In addition to establishing protections for individual animals and populations, the MMPA set up an independent advisory committee called the Marine Mammal Commission (Commission).¹¹ With the assistance of its nine-member Committee of Scientific Advisors, the Commission reviews the status of marine mammal stocks and provides expert recommendations to federal agencies and Congress on how to minimize impacts to marine mammals and their environments.¹² The Commission has been instrumental in drawing attention to emerging issues and funding compelling new research to further reduce the death or serious injury of marine mammals.¹³

Management of marine mammals in U.S. waters is shared by two federal agencies.¹⁴ The National Marine Fisheries Service (NMFS) under the U.S. Department of Commerce has jurisdiction over whales, dolphins, porpoises, seals and sea lions,¹⁵ while the U.S. Fish and Wildlife Service under the Department of the Interior has jurisdiction over manatees, polar bears, sea otters and walruses.¹⁶

Amendments to the MMPA in 1994 required regular assessments of marine mammal populations and set up a system for reducing marine mammal interactions with commercial fisheries.¹⁷ Multi-stakeholder groups called Take Reduction Teams (TRTs) develop consensus-based plans to reduce the serious injury or death of marine mammal stocks¹⁸ in high-risk commercial fisheries.¹⁹ The TRTs develop Take Reduction Plans (TRPs) to guide NMFS in establishing regulations to prevent the depletion of vulnerable marine mammal stocks and aid in their recovery.²⁰ There are currently seven active TRTs, composed of members from the fishing industry, fishery management councils, federal and state agencies, the scientific community and conservation organizations.²¹

Why Does It Matter?

The MMPA recognizes the importance of marine mammals to the health of marine environments and seeks to protect individual animals and populations from human harm.²² The law provides protections for all marine mammals affected by the actions of U.S. citizens or their vessels, regardless of where they are in the world or whether their populations are healthy or declining.²³ Because the MMPA places constraints on some commercial and government activities that may harm marine mammals, it has been targeted by oil and gas and fishing interests in the past.

The MMPA requires action to rebuild populations that have been depleted. The law helps prevent marine mammal populations from decreasing to levels at which they would require protection under the Endangered Species Act (ESA). Once a species is considered in danger of extinction (or likely to become in danger of extinction in the future) throughout all or a significant portion of its range, then it should be listed under the ESA.²⁴ Thus, the MMPA works in tandem with the ESA and other domestic laws and international agreements, such as the Agreement on the International Dolphin Conservation Program.²⁵

Success Stories

Thanks to the MMPA, the death of millions of dolphins in tuna nets that helped spur enactment of the law in 1972 dropped dramatically in the following decade from about 500,000 individuals per year to about 20,000 per year.²⁶ In recent years, fewer than 1,000 dolphins are caught each year as a result of protections under the MMPA and international agreements covering foreign fleets.²⁷ In addition, population levels of the two species that were most affected have started to rise.

While there are many examples of success, the following demonstrate how adherence to the MMPA has prevented the listing of several species as endangered or threatened under the ESA:

- In the early 1990s, bycatch²⁸ of harbor porpoises in commercial gillnets in the Gulf of Maine was the largest known of any marine mammal in the United States.²⁹ The population was in serious decline, which led NMFS to convene a Take Reduction Team to develop a Take Reduction Plan to address the high numbers of deaths and serious injuries.³⁰ Before the plan was implemented in 1999, the average estimated mortality of harbor porpoises in the Northeast sink gillnet fishery was 1,163 animals per year.³¹ In 2002, the harbor porpoise population was recovering,³² and as of the most recent stock assessment report, the average annual mortality was 386 animals.³³
- Commercial harvesting of northern elephant seals for their blubber oil in the 1800s depleted populations to such a low level that the species was considered extinct in 1892.³⁴ Fortunately, a small breeding colony of approximately 20 individuals survived.³⁵ Around the time the MMPA passed in 1972, providing protections, approximately 3,000 elephant seal pups were born in the United States annually.³⁶ In 2014, the pup count had rebounded to around 40,000.³⁷
- Historic populations of gray seals spanned from Labrador to Cape Hatteras³⁸ but were depleted so significantly in the United States that by the early 1980s, the only U.S. sightings recorded were 30 gray seals off the coast of Maine.³⁹ The MMPA provided protection for gray seals in U.S. waters; in the following decades, the pup counts at Muskeget Island in Massachusetts grew from five in 1988⁴⁰ to 3,037 in 2014.⁴¹

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- ¹ Marine mammals include: dolphins, porpoises, whales, seals, sea lions, walruses, polar bears, sea otters, manatees and dugong. National Marine Fisheries Service, *Marine Mammals*, <http://www.nmfs.noaa.gov/pr/species/mammals/> (Last updated Mar. 6, 2017) [hereinafter *NMFS – Species of Marine Mammals*].
- ² United States Government Accountability Office, *NATIONAL MARINE FISHERIES SERVICE: Improvements Are Needed in the Federal Process Used to Protect Marine Mammals from Commercial Fishing* 9 (Dec. 2008), <http://www.fisheries.noaa.gov/pr/pdfs/gao-09-78.pdf> [hereinafter *2008 GAO Report – NMFS: Improvements Are Needed in the Federal Process Used to Protect Marine Mammals from Commercial Fishing*].
- ³ National Marine Fisheries Service, *Office of Protected Resources and the Marine Mammal Protection Act*, http://www.nmfs.noaa.gov/pr/pdfs/mmpa_factsheet.pdf (last visited Mar. 10, 2017) [hereinafter *NMFS – MMPA Fact Sheet*].
- ⁴ A purse-seine net is a large wall of netting deployed around an entire area or school of fish. National Marine Fisheries Service, *Purse Seine: Fishing Gear and Risks to Protected Species*, <http://www.nmfs.noaa.gov/pr/interactions/gear/purseseine.htm> (last updated Jan. 30, 2014).
- ⁵ National Marine Fisheries Service – Southwest Fisheries Science Center, *The Tuna-Dolphin Issue*, <https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=1408> (last updated Sept. 2, 2016) [hereinafter *NMFS-SWFSC – The Tuna-Dolphin Issue*].
- ⁶ *NMFS – MMPA Fact Sheet*.
- ⁷ 16 U.S.C. § 1362(13).
- ⁸ 16 U.S.C. § 1371(a)(1), (2).
- ⁹ 16 U.S.C. § 1372(a)(2), (3), (4).
- ¹⁰ NOAA Office of General Counsel, *Seaward Limit of Laws*, http://www.gc.noaa.gov/gcil_seaward.html#mmpa (last visited Mar. 10, 2017).
- ¹¹ 16 USC §§ 1401-07.
- ¹² 16 U.S.C. § 1402; *2008 GAO Report – NMFS: Improvements Are Needed in the Federal Process Used to Protect Marine Mammals from Commercial Fishing* at 9; Marine Mammal Commission, *About the Commission*, <https://www.mmc.gov/about-the-commission/> (last visited Mar. 10, 2017).
- ¹³ Joe Roman et al., *The Marine Mammal Protection Act at 40: status, recovery, and future of U.S. marine mammals*, 1286 Ann. N. Y. Acad. Sci. 29, 37 (2013), https://www.uvm.edu/giee/pubpdfs/Roman_2013_Annals_of_NY_Academy_of_Sciences.pdf.
- ¹⁴ 16 U.S.C. § 1362 (12)(A)(B).
- ¹⁵ *NMFS – MMPA Fact Sheet*.
- ¹⁶ U.S. Fish and Wildlife Service, *About Marine Mammals* (March 2012), <https://www.fws.gov/International/pdf/marine-mammals.pdf>.
- ¹⁷ 16 U.S.C. §§ 1386-87.
- ¹⁸ Take Reduction Teams are formed to reduce the take of “strategic” marine mammal stocks. Strategic stocks are those that are listed under the Endangered Species Act and those for which human-related mortality exceeds potential biological removal—the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock, while allowing that stock to recover to or be maintained within its optimal sustainable population. 16 U.S.C. § 1362(19), (20). Also, a stock may be considered strategic if there is evidence the population is declining and likely to be listed under the Endangered Species Act in the foreseeable future. *Id.* § 1362(19).
- ¹⁹ National Marine Fisheries Service – Office of Protected Resources, *Marine Mammal Take Reduction Planning* http://www.fisheries.noaa.gov/pr/pdfs/interactions/trp_factsheet.pdf (last visited Mar. 10, 2017) [hereinafter *NMFS-OPR – Marine Mammal Take Reduction Planning Fact Sheet*]. Specifically, Category I or II fisheries, in which there is frequent or occasional incidental mortality or serious injury of marine mammals, respectively. See 16 U.S.C. § 1387(c)(1)(A)(i)-(ii).
- ²⁰ *NMFS-OPR – Marine Mammal Take Reduction Planning Fact Sheet*.
- ²¹ *Id.*
- ²² *2008 GAO Report – NMFS: Improvements Are Needed in the Federal Process Used to Protect Marine Mammals from Commercial Fishing* at 9.
- ²³ *NMFS – Species of Marine Mammals*.
- ²⁴ *NMFS-SWFSC – The Tuna-Dolphin Issue*.
- ²⁵ National Marine Fisheries Service, *Agreement on the International Dolphin Conservation Program*, http://www.nmfs.noaa.gov/ia/agreements/regional_agreements/pacific/aidcp.pdf (last visited Mar. 9, 2017).
- ²⁶ *NMFS-SWFSC – The Tuna-Dolphin Issue*.
- ²⁷ *Id.*
- ²⁸ Bycatch is the incidental catch and resultant injury or mortality of non-target fish, protected marine species and seabirds in fisheries.
- ²⁹ Andrew Read et al., *Bycatch of Marine Mammals in U.S. and Global Fisheries*, 20 Conservation Biology 163, 166 (2006), <http://www.cetus.ucsd.edu/SIO133/PDF/Read%20et%20al.%20Conservation%20Biology%202006.pdf>.
- ³⁰ National Marine Fisheries Service – Office of Protected Resources, *Harbor Porpoise (Phocoena phocoena)*, <http://www.nmfs.noaa.gov/pr/species/mammals/cetaceans/harborporpoise.htm> (last updated Mar. 17, 2014).
- ³¹ National Marine Fisheries Service, *Final review of the Biological Status of the Gulf of Maine/Bay of Fundy Harbor Porpoise (Phocoena phocoena) Pursuant to the Endangered Species Act* 7 (Sept. 28, 2001), <http://www.nmfs.noaa.gov/pr/pdfs/statusreviews/harborporpoise.pdf>.
- ³² It was no longer listed as a strategic stock in 2002. National Marine Fisheries Service, *HARBOR PORPOISE (Phocoena phocoena) Gulf of Maine/Bay of Fundy Stock* 12 (Jan. 2002), <http://www.nmfs.noaa.gov/pr/pdfs/sars/ao2002poha-gmeb.pdf>.
- ³³ *Id.* at 5.
- ³⁴ Brent Stewart et al., *History and present status of the northern elephant seal population* 29 in *Elephant seals: Population Ecology, Behavior and Physiology* (B.J. Le Boeuf and R.M. Laws, eds. 1994), <http://mirounga.ucsc.edu/leboeuf/pdfs/Eseals.1994.Stewart.2.pdf>.
- ³⁵ *Id.* at 33.
- ³⁶ *Id.* at 33-34.
- ³⁷ National Marine Fisheries Service, *NORTHERN ELEPHANT SEAL (Mirounga angustirostris): California Breeding Stock* 25 (July 31, 2015), http://www.nmfs.noaa.gov/pr/sars/pdf/stocks/pacific/2014/po2014_nelephant_seal-ca.pdf.
- ³⁸ Joe Roman et al., *Lifting baselines to address the consequences of conservation success*, 30 Trends in Ecology & Evolution 293, 301 (2015), <http://www.joeroman.com/wordpress/wp-content/uploads/2015/10/roman-et-al-lifting-tree.pdf>.
- ³⁹ National Marine Fisheries Service, *GRAY SEAL (Halichoerus grypus): Western North Atlantic Stock* 117 (1995), <http://www.nmfs.noaa.gov/pr/pdfs/sars/ao1995segr-wn.pdf>.
- ⁴⁰ *Id.*
- ⁴¹ National Marine Fisheries Service, *GRAY SEAL (Halichoerus grypus grypus): Western North Atlantic Stock* 2 (May 2016), <http://www.nmfs.noaa.gov/pr/pdfs/sars/ao1995segr-wn.pdf>.